



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1995

Ms. Y. Qiyamah Taylor
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1031

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32471.

The City of Houston received a request for the personnel file of a city police officer. You contend that a copy of the officer's birth certificate is exempt from required public disclosure under section 552.101 of the Government Code.¹

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 192.002 of the Health and Safety Code makes the birth certificate confidential in the hands of the city. We disagree.


Chapter 192 of the Health and Safety Code regulates the records registering the birth of children born in this state. *See* Health & Safety Code § 192.001. The birth certificate submitted to this office was issued by the State of California. Accordingly, chapter 192 of the Health and Safety Code does not apply to this record. You may not withhold this record under section 552.101 of the Government Code.

¹Although you do not claim that any other information in the personnel file of the officer is excepted from required public disclosure, we note that personnel files often contain information that is confidential by law. We have attached a list of the most common types of confidential information.

However, you must withhold the information listed under parts 11A, 11C, 11D, and 11E under section 552.117 of the Government Code. Open Records Decision No. 622 (1994) (*former* home address and telephone information of "current or former official or employee of a governmental body" is excepted from disclosure under § 552.117).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/LBC/rho

Ref: ID# 32471

Enclosures: Submitted document
Confidentiality list

cc: Mr. Daniel F. Cooley
116 East Edgebrook Drive, #1416
Houston, Texas 77034
(w/o submitted document)

PLEASE NOTE THAT THE RECORDS SUBMITTED TO THIS OFFICE FOR REVIEW MAY CONTAIN INFORMATION DEEMED CONFIDENTIAL BY LAWS NOT ADDRESSED IN THE ATTACHED LETTER RULING. YOU SHOULD THOROUGHLY EXAMINE THE RECORDS AT ISSUE TO DETERMINE WHETHER ANY OF THE PROVISIONS LISTED BELOW APPLY TO INFORMATION IN THESE RECORDS THAT MUST BE WITHHELD IN ACCORDANCE WITH STATE OR FEDERAL LAW.

WE CAUTION THAT THIS IS NOT AN EXCLUSIVE LIST OF CONFIDENTIALITY PROVISIONS AND TYPES OF INFORMATION PROTECTED FROM DISCLOSURE BY COMMON-LAW PRIVACY. THE LIST INCLUDES ONLY THOSE STATUTORY CONFIDENTIALITY PROVISIONS THAT FREQUENTLY AFFECT REQUESTS FOR RECORDS. IF YOU HAVE ANY QUESTIONS REGARDING THE APPLICABILITY OF THESE OR ANY OTHER CONFIDENTIALITY PROVISIONS, PLEASE CONSULT YOUR AGENCY ATTORNEY, WHO WILL BE MOST FAMILIAR WITH PROVISIONS THAT DIRECTLY AFFECT YOUR AGENCY.

COMMON TYPES OF INFORMATION DEEMED
CONFIDENTIAL UNDER COMMON-LAW PRIVACY
(NOTE: RIGHT OF PRIVACY LAPSES UPON DEATH)

- ☐ Information revealing details of sexual assault. Open Records Decision Nos. 440 (1986), 339 (1982).
- ☐ Prescribed drugs a person is taking. Open Records Decision No. 455 (1987).
- ☐ Information regarding drug overdoses, *acute* alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).
- ☐ Results of psychological and IQ tests. Open Records Decision No. 600 (1992).
- ☐ Personal financial information, *e.g.*, mortgage payments, assets, bills, credit history. Open Records Decision Nos. 545 (1990), 373 (1983). *Note: Present and past salaries of public employees and applicants for public employment are not confidential.*
- ☐ Information regarding an employee's participation in a deferred compensation plan, including whether or not an employee is participating, and certain information regarding insurance, such as choice of carrier and optional coverages. Open Records Decision Nos. 600 (1992), 545 (1990).
- ☐ Allegations of sexual harassment -- If there is a clear summary of the allegations, the summary must be released but the identities of victims and witnesses must be redacted from the summary and their detailed statements must be withheld from disclosure. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). If no summary exists, detailed statements regarding the allegations must be released but identities of the witnesses and victims must be redacted from those statements.

INFORMATION COMMONLY PROTECTED BY
STATUTORY CONFIDENTIALITY

- ☐ Medical records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are *created or maintained by a physician*." V.T.C.S. art. 4495b, § 5.08(b).
- ☐ The federal Americans With Disabilities Act (the "ADA", 42 U.S.C. §§ 12101 - 12213, may apply to employee and applicant medical information obtained by a governmental body. The ADA provides that information regarding the medical condition or history of an applicant or employee must be treated as a confidential medical record. *Id.* § 12112(c)(3)(B), (4)(C).
- ☐ Mental health records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained" by a mental health professional. Health & Safety Code § 611.002.
- ☐ EMS records -- "Records of the identity, evaluation, or treatment of a patient" created or maintained by EMS personnel. Health & Safety Code § 773.091.
- ☐ Polygraph examination results -- Any "information acquired from a polygraph exam." V.T.C.S. art. 4413(29cc), § 19A.
- ☐ Home addresses and telephone numbers of public employees and former employees who have elected, *prior to the current open records request*, to restrict access to this information in compliance with Gov't Code § 552.024(b).
- ☐ Home addresses and telephone numbers of peace officers. Gov't Code § 552.024.
- ☐ Criminal history information -- All TCIC and NCIC information; other compilations of an individual's criminal history *except for offense for which individual is currently under the supervision of criminal justice system*.
- ☐ Records of juvenile offenders -- Fam. Code § 51.14.
- ☐ Records relating to reports of child abuse -- Fam. Code § 34.08.
- ☐ Social security numbers -- confidential only if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law that was enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(viii)(I); *see* Open Records Decision No. 622 (1994).
- ☐ Student records -- confidential only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Therefore, governmental bodies must withhold from education records only that information tending to identify a particular student. "Directory information," as defined at 20 U.S.C. § 1232g(a)(5)(A), must be released in its entirety.